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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
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11 HALL L. JOHNSON, III,  
12 Petitioner,  
13 v.  
14 B. CATES,  
15 Respondent.

Case No. 2:22-CV-04455-RGK-PD  
**ORDER TO SHOW CAUSE RE:  
DISMISSAL OF HABEAS  
PETITION**

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17 On June 29, 2022, Petitioner Hall L. Johnson, III, filed a Petition under  
18 28 U.S.C. § 2254 challenging his 2017 state convictions for multiple sex  
19 crimes against a minor. The Court issues this Order to Show Cause directed  
20 to Petitioner because the face of the Petition suggests that it is an  
21 unauthorized second or successive petition.

22 **I. Procedural History**

23 A Los Angeles County Superior Court jury convicted Petitioner of one  
24 count of human trafficking of a minor for a commercial sex act, two counts of  
25 committing a lewd act upon a child, one count of kidnapping for child  
26 molestation, and two counts of forcible rape, in violation of California Penal  
27 Code sections 236.1(c)(1), 288(a), 261(b), and 261(a)(2). He was sentenced to  
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1 31 years and four months to life in state prison. [See Pet. at 2];<sup>1</sup> *Johnson v.*  
2 *Sullivan*, No. CV 20-1198-RGK (PD) (filed Feb. 6, 2020) (“*Johnson II*”), Dkt.  
3 No. 15-1 at 10-14. He appealed, and the California Court of Appeal vacated  
4 the sentence and remanded to the trial court for resentencing but otherwise  
5 affirmed the judgment.

6 On remand, Petitioner was resentenced to 40 years and eight months in  
7 state prison. He again appealed, the California Court of Appeal affirmed, and  
8 the California Supreme Court denied review. See *Johnson II*, Dkt. Nos. 15-2,  
9 15-5 through 15-7.

10 After the court of appeal vacated his initial sentence, Petitioner filed an  
11 unsuccessful state habeas petition in the California Court of Appeal and a  
12 premature federal habeas petition in this Court. See *Johnson II*, Dkt. Nos.  
13 15-3, 15-4; see also *Johson v. Sullivan*, No. CV 19-232-RGK (JDE) (filed Jan.  
14 10, 2019) (“*Johnson I*”). He then filed a habeas petition in the California  
15 Supreme Court, which denied it on January 22, 2020. See Cal. App. Cts. Case  
16 Info., <http://appellatecases.courtinfo.ca.gov/> (search for “Hall” with “Johnson”  
17 in supreme court) (last visited Aug. 29, 2022).

18 On February 6, 2020, Petitioner filed a second habeas petition in this  
19 Court, asserting three claims challenging his 2017 convictions. On June 15,  
20 2021, the District Judge dismissed the petition on its merits with prejudice.  
21 See *Johnson II*, Dkt. Nos. 1, 49, 54, 55. Petitioner then requested a certificate  
22 of appealability in the Ninth Circuit Court of Appeals, which denied it on  
23 March 30, 2022. He moved for reconsideration, and the Ninth Circuit denied  
24 the motion on April 28, 2022. See *id.*, Dkt Nos. 64, 65.

25 Meanwhile, on October 18, 2021, Petitioner filed a habeas petition in  
26 the California Court of Appeal, which denied it on January 20, 2022. [See Pet.

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28 <sup>1</sup> The Court uses the page numbers inserted on the pleadings by the electronic  
docketing system.

1 at 3-4]; Cal. App. Cts. Case Info., <http://appellatecases.courtinfo.ca.gov/>  
 2 (search for “Hall” with “Johnson” in court of appeal, 2d dist.) (last visited Aug.  
 3 29, 2022). He then filed a habeas petition in the California Supreme Court,  
 4 which denied it on June 15, 2022. [See Pet. at 4]; Cal. App. Cts. Case Info.,  
 5 <http://appellatecases.courtinfo.ca.gov/> (search for “Hall” with “Johnson” in  
 6 supreme court) (last visited Aug. 29, 2022).

7 On June 29, 2022, he filed the instant Petition.

## 8 **II. Discussion**

9 The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”)  
 10 “creates a ‘gatekeeping’ mechanism for the consideration of second or  
 11 successive applications in district court.” *Felker v. Turpin*, 518 U.S. 651, 657  
 12 (1996); *Stewart v. Martinez-Villareal*, 523 U.S. 637, 641 (1998). Under this  
 13 procedure, “[a]n individual seeking to file a ‘second or successive’ application  
 14 must move in the appropriate court of appeals for an order directing the  
 15 district court to consider his application.” *Martinez-Villareal*, 523 U.S. at 641.  
 16 Thereafter, the appellate court “may authorize the filing of a second or  
 17 successive application only if it determines that the application makes a  
 18 *prima facie* showing that the application satisfies the requirements of” the  
 19 AEDPA. 28 U.S.C. § 2244(b)(3)(C); *Morales v. Ornoski*, 439 F.3d 529, 531 (9th  
 20 Cir. 2006). If, however, a petitioner files a second petition without obtaining  
 21 authorization from the appropriate court of appeals to do so, the district court  
 22 is “without jurisdiction to entertain [the second petition].” *Burton v. Stewart*,  
 23 549 U.S. 147, 157 (2007).

24 Here, Petitioner already has filed a federal habeas petition challenging  
 25 his 2017 convictions, and that petition was denied with prejudice on its  
 26 merits. *See Johnson II*, Dkt. Nos. 1, 49, 54, 55. He does not allege that he  
 27 obtained the requisite authorization from the Ninth Circuit Court of Appeals  
 28 to file a second or successive petition in this Court challenging his 2017

1 convictions. The current Petition, therefore, appears to be an unauthorized  
2 second or successive petition. *See Gonzalez v. Crosby*, 545 U.S. 524, 532  
3 (2005) (explaining that petition is successive within meaning of § 2244(b)  
4 where it “seeks to add a new ground for relief” or “if it attacks the federal  
5 court’s previous resolution of a claim *on the merits*”) (emphasis in original);  
6 *Carranza v. Hill*, No. 2:20-04118 CAS (ADS), 2020 WL 8970749, \*2 (C.D. Cal.  
7 May 12, 2020) (holding that “dismissal with prejudice constituted a decision  
8 on the merits and renders subsequent petitions successive under AEDPA”)  
9 (citing *McNabb v. Yates*, 576 F.3d 1028, 1029-30 (9th Cir. 2009)).

10 Moreover, that Petitioner alleges that the Petition’s first claim for relief  
11 is based on “newly discovered evidence” [see Pet. at 5] is not sufficient to  
12 overcome the bar on unauthorized second or successive petitions. To be sure,  
13 “[a] habeas petition is second or successive only if it raises claims that were or  
14 could have been adjudicated on the merits.” *McNabb*, 576 F.3d at 1029. But  
15 Petitioner fails to explain why any of the Petition’s claims could not have been  
16 raised in his prior federal habeas petition. What’s more, both the Petition’s  
17 claims concern appellate counsel’s failure to challenge on appeal the  
18 prosecutor’s pretrial actions of amending the information to add counts  
19 against Petitioner. [See Pet. at 5-11.] Although Petitioner claims to have  
20 unearthed a “newly discovered ‘minute order’” that purportedly supports his  
21 claims, he cites to the trial transcript to show the order’s existence. [See Pet.  
22 at 9, 24-28.] In any event, he undoubtedly knew that he was charged with the  
23 crimes of which he was convicted long before he filed his previous federal  
24 habeas petition. Thus, he could have asserted his current claims when he  
25 filed that petition, rather than attempting to do so now.

26 Accordingly, it appears that the Court lacks jurisdiction to consider the  
27 Petition.  
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